

FACTUAL HISTORY

On January 15, 2013 appellant, then a 43-year-old Power Plant Trainee II, filed a traumatic injury (Form CA-1) claim for a right knee injury sustained on October 21, 2012 when descending a step ladder. On the reverse of the form, appellant's supervisor stated that the injury occurred on October 21, 2012. In an authorization for medical treatment (Form CA-16) dated January 15, 2013, he noted October 21, 2012 as the date of injury.

Dr. Jon T. Peterson, an attending physician Board-certified in emergency medicine, provided a January 16, 2013 report relating appellant's account of injuring his right knee before Thanksgiving, then it "popped" again on January 12, 2013.

Dr. Howard Brown, an attending Board-certified orthopedic surgeon, noted in his February 18, 2013 reports that appellant experienced right knee pain after a ladder incident, then in January 2013 heard his right knee "pop" while squatting at work. He diagnosed an anterior cruciate ligament tear and scheduled arthroscopy for March 12, 2013.²

In a March 4, 2013 letter, OWCP advised appellant of the additional evidence needed to establish his claim, including an explanation of the discrepancy between Dr. Peterson's statement that appellant injured his knee before Thanksgiving and the claim form injury date of October 21, 2012. Appellant was afforded 30 days to submit such evidence.

In response, appellant's supervisor submitted a March 19, 2013 letter explaining that he mistakenly wrote October 21, 2012 as the injury date on appellant's claim form but that the correct date of injury was November 21, 2012. Dr. Brown provided a February 13, 2013 report stating that, on November 12, 2012, appellant twisted his right knee when he stepped off a ladder. In January 2013, appellant heard a "pop" in his right knee while squatting.

By decision issued April 3, 2013, OWCP denied appellant's claim on the grounds that fact of injury was not established. It found that the discrepancies in the dates of injury cast significant doubt on the time, place and the manner of the claimed injury.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the

² A January 31, 2013 magnetic resonance imaging (MRI) scan of the right knee showed a complete anterior cruciate ligament tear.

employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

In order to determine whether an employee sustained a traumatic injury in the performance of duty, OWCP begins with an analysis of whether “fact of injury” has been established. Generally, fact of injury consists of two components that must be considered in conjunction with one another. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident that is alleged to have occurred.⁵ An employee has not met his or her burden of proof in establishing the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.⁶ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁷

ANALYSIS

There are significant factual discrepancies as to the date and mechanism of injury. Appellant claimed that he sustained a right knee injury when climbing down a step ladder on October 21, 2012. His supervisor corroborated the October 21, 2012 date in the claim form and an authorization for medical treatment. However, the supervisor later asserted that the injury occurred on November 21, 2012. Dr. Peterson, an attending physician Board-certified in emergency medicine, related appellant’s account of injuring his right knee before Thanksgiving, then it “popped” again on January 12, 2013. Dr. Brown, an attending Board-certified orthopedic surgeon, placed the “ladder incident” on November 12, 2012, followed by a right knee “pop” in January 2013 while squatting at work. Thus, the record provides October 21, 2012, November 21, 2012 and “before Thanksgiving” as the date of the initial injury, and no date for the squatting incident. These inconsistencies create significant doubt as to the time, place and manner of the claimed injury.⁸

The Board notes that OWCP advised appellant by March 4, 2013 letter of the factual evidence needed to resolve the discrepancies regarding the occurrence of the claimed right knee injury. However, appellant did not submit such evidence. Therefore, he has not established a right knee injury. As appellant failed to establish the threshold issue of the fact of the incident, it is premature to address the secondary issue of causal relationship by reviewing the medical evidence in this case.

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *Gary J. Watling*, 52 ECAB 278 (2001).

⁶ *S.N.*, Docket No. 12-1222 (issued August 23, 2013); *Tia L. Love*, 40 ECAB 586, 590 (1989).

⁷ *Deborah L. Beatty*, 54 ECAB 340 (2003).

⁸ *S.N.*, *supra* note 6.

On appeal, appellant contends that his supervisor and a coworker corroborated his account of events. As stated, there are still significant, unresolved discrepancies regarding the date and mechanism of injury in this case.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not established that he sustained a traumatic right knee injury in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated April 3, 2013 is affirmed.

Issued: March 5, 2014
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board